IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 23RD JANUARY 2007 / 3RD MAGHA 1928

Crl.MC.No. 182 of 2007()

CC.246/2002 of JUDL.MAGISTRATE OF FIRST CLASS COURT, OTTAPPALAM

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PETITIONER:

HUSSAIN @ HUSSAN, S/O.ALYAMU,
AGED 36 YEARS, POOLACKAPARAMBIL,
CHALIYAMKUNNU, CHERUPULASSERY,
OTTAPALAM TALUK.

BY ADV. SRI.E.R.VENKATESWARAN
SRI.R.SREEHARI

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY
THE SUB INSPECTROR OF POLICE, CHERPULASSERY
THROUGH THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 23/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 182 of 2007

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Dated this the 23rd day of January, 2007

O R D E R

The petitioner is the first accused in a prosecution, inter alia, under Section 506(i) I.P.C. The petitioner did not appear before the learned Magistrate and accordingly a warrant of arrest has been issued to procure the presence of the petitioner. He submits that the co-accused have already been acquitted. The case against him has been split up. He apprehends that when he surrenders, his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. It is in these circumstances prayed that appropriate directions under Section 482 Cr.P.C. may be issued in favour of the petitioner.

2. It is certainly for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner when he surrenders before the learned Magistrate, on

merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decision in **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

3. This Crl.M.C. is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R. BASANT)
Judge

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